

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

**Case No. A-6130**

**PETITION OF VICTOR J. POLLARA**  
(Hearing held April 26, 2006)

**OPINION OF THE BOARD**  
(Effective date of Opinion, June 15, 2006)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Sections 59-C-1.326(a)(2)(A) and 59-C-1.326(a)(1). The petitioner proposes the construction of a two-story accessory structure/detached garage in the front yard that requires a variance of twenty-one (21) foot variance as it is within forty-four (44) feet of the front lot line. Section 59-C-1.326(a) requires accessory structures to be located in the rear yard only and the required front lot line setback is sixty-five (65) feet.

The subject property is Parcel P294, Ray's Adventure Subdivision, located at 21930 Big Woods Road, Dickerson, Maryland, 20842, in the R-200 Zone (Tax Account No. 00921638).

Decision of the Board: Requested variances **granted**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioner's proposes the construction of a 24 x 30 foot two-story accessory structure/detached garage in the front yard.
2. The petitioner testified that his lot is extremely deep, with the area immediately at the rear of the house in a flood plain. The petitioner testified that the property was subdivided in 1910 and that the Little Monacacy River crosses a portion of the lot. The petitioner testified that the river is 30 feet wide and that the lot also has located at both of its sides two streams, which meet at a point on a neighboring property. The petitioner testified that a creek crosses under the road about 15 feet from the front of the lot and that another creek flows south of Big Woods Road, which meet on the neighbor's property [P248]. See Exhibits 8 [zoning vicinity map] 12 [site plan].

3. The petitioner testified that after Hurricane Aida in August of 2003, his property flooded. The petitioner testified that his house is built on the property's highest ground and that the house was built 100 years ago. The petitioner testified that the property has a functional well and septic system that was grandfathered with the property and that the well and septic system can not be located elsewhere on the property. The petitioner testified that the septic system is located immediately behind the house and that to locate it deeper in the lot would place it in the flood plain.
4. The petitioner testified that the proposed garage would be sited on a very steep 8 foot slope and that the back of the proposed structure will be below grade level. The petitioner testified that the area at the rear of the house slopes severely downward and that all of the properties to the north, south and west of his lot are located at a much higher level than his lot. The petitioner testified that an existing shed on the property was built by the prior owner and that the structure is built on cinder blocks and that it straddles the septic field. See Exhibits 7(c) [photograph] and 5(f) through 5(h) [renderings].
5. The petitioner testified that the proposed garage would be in harmony with other improvements in the neighborhood as a lot of the houses, porches and accessory structures in the immediate neighborhood are sited close to the road and are located within the required setbacks for the zone.

### **FINDINGS OF THE BOARD**

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

*(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the low elevation of the subject property relative to the high elevations of the neighboring properties, combined with the fact that a majority of the property is located in a flood plain, which has a potential for flooding, results in a very limited area on which any improvements to the lot can be made.

The Board finds that these exceptional conditions peculiar to the subject property and that the strict application of the zoning regulations would result in practical difficulties to and an undue hardship upon the property owner.

*(b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variances requested for the construction of a two-story accessory structure/detached garage are the minimum reasonably necessary.

*(c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the proposed construction will continue the residential use of the property and that the variances will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

*(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the proposed garage will not be detrimental to the use and enjoyment of the neighboring and adjoining properties.

Accordingly, the requested a variance of twenty-one (21) feet from the required sixty-five (65) foot front lot line setback variance and to permit the construction of an accessory structure/detached garage in front yard are granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 5(a) through 5(h) [elevations and renderings] and 12 [survey].

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Donna L. Barron, seconded by Angelo M. Caputo, with Wendell M. Holloway, Caryn L. Hines and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.

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Allison Ishihara Fultz  
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 15th day of June, 2006.

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Katherine Freeman  
Executive Director

**NOTE:**

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.